IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.8603 OF 2004

-1. Hindustan Petroleum Corpn.Ltd.
having their head office at 17,
Jamshedji Tata Road, Mumbai-400020
and Regional Office at D-500 T. T. C.
Industrial Area, Post Box No.2, Vashi,
Navi Mumbai.
-2. Mr. Ashok Singh haing his office
at D-500, T. T. C. Industrial Area,
Post Box No.2, Vashi. ...Petitioners.

Vs.

M/s. Parshwa Auto Center through
Propritor Shri Lalji Lakhamsi Dedhiya
at Hal Budruk, Taluka Khalapur,
Dist. Raigad. ...Respondent

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Mr. M.D. Siodia with Ms.D. S. Retiwala i/b. Rustomji & Ginwalla for the Petitioners.
Respondent served.

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CORAM : DR. D.Y. CHANDRACHUD, J.

April 12, 2006.

ORAL JUDGMENT:

The Respondent had obtained a retail dealership for petrol and diesel from the First Petitioner on the Mumbai-Pune Highway at Hal Budruk, Taluka Khalapur, District Raigad. On 20th January 2004, a communication was addressed by the Chief

Regional Manager of the First Petitioner adverting to a visit of the Executive Sales Officer on 1st December 2003 during the course of which a sample of motor spirit was drawn from the retail outlet and was sent for testing. It was stated in the communication that the lab report showed that the sample did not meet the prescribed limit. A notice was issued to the Respondent to show cause as to why action in terms of the dealership agreement should not be taken. An opportunity of submitting a reply was furnished to the Respondent. After examining the reply of the Respondent dated 30th January 2004, the Chief Regional Manager informed the Respondent on 4th February 2004 that the failure of the sample to meet prescribed requirements was a major irregularity upon which supplies to the outlet were suspended for a period of 30 days and a penalty of Rs.20,000/- was imposed. The Respondent was informed that since this was the first violation, a stricter view that would have led to the termination of the dealership has not been taken. From the order which is impugned in these proceedings, it is clear that the period of suspension was undergone and a fine of Rs.20,000/- came to be deposited. The Respondent instituted a suit in the Court of the Civil Judge, Junior Division, Khalapur, seeking a permanent injunction against the Petitioners from

stopping the supply of diesel and petrol to the outlet. The record would show that on 9th February 2004, initially upon entering appearance, the Petitioners raised a preliminary objection to the maintainability of the suit and sought a reference to arbitration in terms of Section 8 of the Arbitration and Conciliation Act, 1996, since the dealership agreement contained a clause – Clause 66 – providing for a reference of disputes between the parties for arbitration.

2. The Learned Trial Judge by his order dated 16th February 2004 granted an injunction restraining the Petitioners from suspending the supply of diesel to the outlet of the Respondent pending disposal of the suit. In an appeal filed by the Petitioners that order was confirmed by the District Judge, Raigad at Alibag on 30th April 2004.

3. In these proceedings, notice was issued on 19th October 2005 with a specific direction that the petition would be heard and finally disposed of at the stage of admission. Counsel appearing on behalf of the Petitioners states that the Respondent was served with the proceedings, together with the order of this Court by

Registered Post of which an acknowledgment has been received. The office endorsement shows that the Respondent is served. In view thereof, it would be appropriate to dispose of the petition finally at the present stage. The Respondent has remained absent despite notice that the petition will be heard finally.

4. Clause 66 of the dealership agreement between the parties specifically provides for a reference of disputes to arbitration. Clause 66 is as under:

> "66. Any dispute or difference of any nature whatsoever or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the Managing Director of the Corporation or of some officer of the Corporation who may be nominated by the Managing Director. The dealer will not be entitled to raise any objection to any such arbitration on the ground that the Arbitrator is an officer of the Corporation or that he has to deal with the matters to which the contract relates or that in the course of his duties an an officer of the Corporation he had expressed views on all or any of the matters in dispute or difference. In the event of the Arbitrator to whom the matters is originally referred being transferred or vacating his office or being unable to act for any reason, the Managing Director as aforesaid at the time of transfer, vacation of office or inability to act, shall designate another person to act as Arbitrator in accordance with the terms of the agreement such person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the Managing Director of the

> Corporation as aforesaid shall act as Arbitrator hereunder. The award of the Arbitrator so appointed shall be final, conclusive and binding on all parties of the agreement, subject to the provisions of the Arbitration Act, 1940 or any statutory modification of or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply tot he arbitration proceedings under this clause."

5. Section 8 of the Arbitration and Conciliation Act, 1996 provides that a judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration. Section 8 of the Arbitration and Conciliation Act, 1996, is peremptory in nature and character. In **Hindustan Petroleum Corporation Ltd. Vs. M/s. Pinkcity Midway Petroleums,** AIR 2003 SC 2881, the position in law was thus enunciated by the Supreme Court :

> "This Court in the case of P. Anand Gajapathi Raju and others v. P.V. G. Raju (Dead) and others (2000 (4) SCC 539) has held that the language of Section 8 is peremptory in nature. Therefore, in cases where there is an arbitration clause in the agreement, it is obligatory for the Court to refer the parties to arbitration in terms of their arbitration agreement and nothing remains to be decided in the original action after such an application is made except to refer the dispute to an arbitrator. Therefore, it is clear that if as contended by a party in an

> agreement between the parties before the Civil Court there is a clause for arbitration, it is mandatory for the Civil Court to refer the dispute to an arbitrator. In the instant case the existence of an arbitral clause in the agreement is accepted by both the parties as also by the Courts below but the applicability thereof is disputed by the respondent and the said dispute is accepted by the Courts below. Be that as it may, at the cost of repetition we may again state that the existence of the arbitration clause is admitted. If that be so, in view of the mandatory language of Section 8 of the Act, the Courts below ought to have referred the dispute to arbitration."

6. Having regard to the settled position of law, therefore, the Learned Trial Judge was manifestly in error in not referring the parties to arbitration in terms of arbitration clause contained in the dealership agreement. The Additional District Judge, noted that the record and proceedings would show that the First Petitioner put in an appearance on 9th February 2004 and filed a reply specifically stating that it was preferring an application under Section 8. Accordingly, an application under Section 8 came to be filed on the very day i.e. 9th February 2004. That being the position, it is clear that the Petitioners applied before the judicial authority before submitting a first statement on the substance of the dispute. The Additional District Judge was, therefore, manifestly in error in declining to accede to the request of the Petitioners for a reference

to arbitration in terms of Section 8.

7. Accordingly, the exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution is clearly warranted since the Courts below palpably ignored the plain consequence of the mandatory provisions contained in the Arbitration and Conciliation Act, 1996. Counsel appearing on behalf of the Petitioners states that in terms of clause 66 of the arbitration agreement, the Managing Director shall take up the matter or shall nominate an arbitrator to take up the reference within a period of four weeks from today. The statement is accepted. There shall, accordingly, be a reference in pursuance of Section 8 of the Arbitration and Conciliation Act, 1996 in terms of clause 66 of the dealership agreement. The suit instituted by the Respondent shall accordingly stand disposed of.

8. The petition is allowed. The impugned order of the District Judge, Raigad dated 30th April 2004 is quashed and set aside. Rule made absolute. No order as to costs.

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